

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

ENESCO, LLC,

Plaintiff,

v.

SEVENTH AVENUE, INC.,

Defendant.

Civil Action No.:

COMPLAINT

Plaintiff Enesco, LLC (“Plaintiff” or “Enesco”), through its undersigned counsel, complains and alleges against defendant Seventh Avenue, Inc. (“Defendant” or “Seventh Avenue”) as follows:

**INTRODUCTION**

1. For more than a century, Plaintiff’s Gund division has been the preeminent manufacturer and retailer of plush toys in the United States and around the world. Beloved by children and parents alike, Gund’s teddy bears and other plush toys are recognized as the industry standard.

2. Among Gund’s most popular toys is its Animated Peek-A-Boo Bear” product (“Peek-A-Boo Bear”), a seated plush teddy bear holding a blanket. The Peek-A-Boo Bear’s arms articulate up and down so that the blanket alternately obscures and reveals the teddy bear’s face, and also includes a function that plays loving, pre-recorded messages in a high, child-like voice, as the mouth moves in unison.

3. In 2012, Plaintiff secured a United States design patent for the configuration of the Peek-A-Boo Bear.

4. In addition, Plaintiff has secured two United States copyright registrations covering the Peek-A-Boo Bear.

5. Plaintiff has a copyright application currently pending for the soundtrack of the Peek-A-Boo Bear.

6. Years after Plaintiff introduced the Peek-A-Boo Bear to consumers, the Defendant, who has no affiliation with Enesco, shipped, distributed, marketed, promoted, sold, and/or offered for sale a seated plush teddy bear toy with articulating arms holding a blanket (the “Infringing Product”). Moreover, on information and belief, the Infringing Product incorporates a voice function that plays *the same phrases in a virtually identical voice*.

7. The Infringing Product violates Plaintiff’s exclusive design patent rights and copyrights. Accordingly, this is an action for patent infringement in violation of 35 U.S.C. § 271 and 17 U.S.C. § 101, *et seq*, respectively.

8. In this Complaint, Enesco seeks damages and injunctive relief arising from Defendant’s deliberate infringement of Plaintiff’s federally registered patent and copyrights.

9. Defendant’s conduct has irreparably harmed Enesco.

### **JURISDICTION AND VENUE**

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338 as it arises under the copyright and patent laws of the United States.

11. This Court has personal jurisdiction over Defendant, because, on information and belief, Defendant marketed, promoted, sold, offered for sale, distributed, and/or shipped the Infringing Products to retailers and consumers throughout the United States and in this judicial district.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and (c)(3).

**THE PARTIES**

13. Enesco is a limited liability company organized under the laws of the State of Delaware, with a principal place of business of 225 Windsor Drive, Itasca, Illinois 60143.

14. Gund, a Division of Enesco (“Gund”), is a famous, industry-leading producer, designer, and marketer of plush toys, blankets, and accessories. Gund’s products are displayed, promoted, sold, and offered for sale in this judicial district, throughout the United States and around the world.

15. Gund’s principal place of business is located at One Runyons Lane, Edison, New Jersey 08817.

16. Gund has a showroom located in this judicial district at 10 West 33<sup>rd</sup> Street, Suite 526, New York, New York 10001.

17. On information and belief, defendant Seventh Avenue, Inc. is a corporation organized under the laws of Wisconsin, with a principal place of business of 1112 7<sup>th</sup> Avenue, Monroe, Wisconsin, 53566.

18. On information and belief, Seventh Avenue maintains an interactive website at the domain name [seventhavenue.com](http://seventhavenue.com), which is accessible in this judicial district and throughout the world, and through which Seventh Avenue displays, promotes, markets, advertises, and sells hundreds of products direct to consumers.

19. On further information and belief, Seventh Avenue markets and sells hundreds of products via its catalog to consumers and retailers throughout the United States and in this judicial district.

20. On information and belief, Seventh Avenue has distributed, promoted, advertised, marketed, sold, offered for sale, and/or shipped the Infringing Product to consumers in this judicial district.

### **FACTUAL BACKGROUND**

21. For more than a century, Plaintiff's Gund division has created innovative, high quality, and beloved plush products.

22. Among the products designed and marketed by Plaintiff is its Peek-A-Boo Bear, a seated plush teddy bear holding a blanket.

23. The Peek-A-Boo Bear incorporates a mechanism that articulates the arms up and down so that the blanket alternately obscures and reveals the teddy bear's face. The Peek-A-Boo Bear mechanism is activated by pressing a button on the toy's left foot.

24. The mechanism also causes the Peek-A-Boo Bear's mouth to move, and to play a high-pitched, child-like recorded voice that speaks a series of several encouraging, whimsical messages. Plaintiff is solely responsible for producing the Peek-A-Boo Bear's soundtrack—Enesco wrote the script, hired the voice talent, and recorded and edited the recording played by each Peek-A-Boo Bear.

25. Plaintiff first released its Peek-A-Boo Bear in 2011. In that time, it has garnered substantial sales success and popular acclaim. By way of example, the Peek-A-Boo Bear was named one of the 100 Best Children's Products of 2011 by Dr. Toy, a leading expert on toys and children's products.

26. On April 24, 2012, the United States Patent and Trademark Office duly and lawfully issued United States Design Patent No. D658,241, entitled "Toy With Multiple Positions" (the "D241 Patent"). Plaintiff is the owner by assignment of all right, title, and interest

in the D241 Patent. A true and correct copy of the D241 Patent is attached hereto as Exhibit 1.

27. Plaintiff has provided Defendant and the public with constructive notice of its rights in the D241 Patent pursuant to 35 U.S.C. § 287.

28. On information and belief, Seventh Avenue promoted, advertised, marketed, sold, offered for sale, distributed and shipped the Infringing Product to consumers in this judicial district.

29. On information and belief, Seventh Avenue sold the Infringing Product through its catalog service and via its website accessible at seventhavenue.com. Copies of webpages from defendant Seventh Avenue's website promoting and offering the Infringing Product are attached as Exhibit 2.

30. Seventh Avenue marketed the Infringing Product under the product name "Peek-A-Boo Bear"—precisely the same name as Plaintiff's genuine Peek-A-Boo Bear.

31. On information and belief, the Infringing Product is a seated plush bear holding a blanket. The configuration of the Infringing Product is virtually identical to the genuine Peek-A-Boo Bear:

Peek-A-Boo Bear



Infringing Product



32. On information and belief, both the Peek-A-Boo Bear and the Infringing Product are rendered in seated positions with legs splayed and blankets attached to their front paws. Both bears have oval shaped heads with protruding rounded ears, and feature plastic eyes and oval noses protruding from their snouts. Both bears likewise have sandy-colored fur, white snouts, brown plastic eyes, and brown protruding noses.

33. On information and belief, the Infringing Product—just like the Peek-A-Boo Bear—incorporates a mechanism that raises and drops the bear’s arms, lifting and lowering the attached blanket to play “peek-a-boo.” As with the Peek-A-Boo Bear, the Infringing Product’s mechanism is triggered by pressing a button embedded in the bear’s left foot.

34. On information and belief, the Infringing Product’s mechanism also causes its mouth to move, and to recite different sweet phrases in a high-pitched, child-like voice.

35. On information and belief, the Infringing Product tellingly plays the same phrases, in virtually the same voice, as the Peek-A-Boo Bear, including:

- *Hi baby! Peek-a-boo is the most fun with you!*
- *Hi cutie pie!*
- *Where did you go? Peek-a-boo, I found you!*
- *Where are you?*
- *Peek-a-boo! I see you!*
- *Where did you go?*
- *Peek-a-boo, hello baby!*
- *Again! Again! Let’s keep playing!*

36. On information and belief, Defendant’s mimicry of not just the Peek-A-Boo Bear’s configuration, but its recorded voice as well, lays bare both its prior knowledge and intentional, wholesale copying of the Peek-A-Boo Bear.

37. On December 1, 2017, Plaintiff’s counsel sent a letter to the Associate General Counsel of Defendant’s parent company Colony Brands, Inc., notifying Defendant of Plaintiff’s

valuable and exclusive rights in the D241 Patent, and alerting Defendant that its sale, distribution, and promotion of the Infringing Product infringed upon Plaintiff's rights. A copy of Plaintiff's December 1 letter is attached as Exhibit 3.

38. On April 3, 2015, the United States Copyright Office duly and lawfully issued to Plaintiff Copyright Registration No. TX 8-028-904 entitled "GUND August 2011 Catalog." Plaintiff's copyrighted catalog prominently features images and descriptions of the Peek-A-Boo Bear. Subsequently, on December 20, 2016, the United States Copyright Office duly and lawfully issued to Plaintiff Copyright Registration No. VA 2-024-940 entitled "320193 Animated Peek-A-Boo Bear." True and correct copies of Plaintiff's copyright registrations covering the Peek-A-Boo Bear (collectively, the "Enesco Copyrights") are attached as Exhibit 4.

39. Plaintiff has filed a federal copyright application for the soundtrack of Peek-A-Boo Bear.

40. On information and belief, Defendant had knowledge of and access to the Peek-A-Boo Bear prior to distributing, selling and offering the Infringing Product for sale.

41. On information and belief, Defendant knowingly and willfully sourced, imported, and/or otherwise acquired the Infringing Product due to its substantial similarity to the Peek-A-Boo Bear.

42. Consumers encountering both Plaintiff's genuine Peek-A-Boo Bear and the Infringing Product are likely to discern a substantial similarity between the Peek-A-Boo Bear and the Infringing Product.

43. Defendant's distribution, promotion, advertising, marketing, sale, and offering for sale of the Infringing Product infringes upon Plaintiff's valuable, exclusive rights in both the D241 Patent and the Enesco Copyrights.

44. Defendant's acts have caused Plaintiff to suffer irreparable injury to its business. Enesco has suffered substantial loss of goodwill and reputation due to Defendant's acts.

**COUNT I**

**Patent Infringement in Violation of 35 U.S.C. § 271**

45. Plaintiff repeats and realleges paragraphs 1 through 44 of its Complaint as if fully set forth herein.

46. Defendant has knowingly, intentionally, and willfully infringed the D241 Patent by shipping, distributing, promoting, advertising, displaying, offering for sale, and selling the Infringing Product, which has a design covered by the claim of the D241 Patent.

47. On information and belief, Defendant's acts of infringement of the D241 Patent were undertaken without permission or license from Plaintiff.

48. On information and belief, Defendant had actual and constructive notice of the D241 Patent and Plaintiff's rights, and its actions constitute willful and intentional infringement of the D241 Patent.

49. Accordingly, Defendant infringed the D241 Patent with reckless disregard of Plaintiff's rights therein, as Defendant knew or should have known that its actions constituted infringement of the D241 Patent.

50. As a direct and proximate result of its infringement of the D241 Patent, Defendant has derived and received gains, profits, and advantages in an amount yet to be determined.

51. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to damages for Defendant's infringing acts and treble damages together with interests and costs as fixed by this Court.

52. Pursuant to 35 U.S.C. § 289, Plaintiff is entitled to Defendant's total profits from the sale of the Infringing Product.



53. Pursuant to 35 U.S.C. § 285, Plaintiff is entitled to reasonable attorneys' fees for the necessity of bringing this claim.

54. Due to Defendant's infringing acts, Plaintiff has suffered significant and irreparable injury for which Plaintiff has no adequate remedy at law.

## **COUNT II**

### **Copyright Infringement in Violation of 17 U.S.C. §§ 106, 501**

55. Plaintiff repeats and realleges paragraphs 1 through 54 of its Complaint as if fully set forth herein.

56. The Enesco Copyrights are valid, subsisting, and in full force and effect.

57. Plaintiff has not licensed or otherwise granted permission to Defendant to use, reproduce, display, and/or create derivative works of the design of the Peek-A-Boo Bear, as protected by the Enesco Copyrights.

58. Defendant had ample access to the Peek-A-Boo Bear prior to Defendant's marketing, promotion, advertising, display, sale, and/or distribution of the Infringing Product infringed Enesco's exclusive copyrights.

59. Accordingly, Defendant infringed the Enesco Copyrights with knowledge of and/or reckless disregard for Plaintiff's rights, as Defendant knew or should have known that its actions constituted infringement of Plaintiff's rights.

60. As a direct and proximate result of such infringement, Defendant has derived and received gains, profits, and advantages in an amount yet to be determined.

61. Pursuant to 17 U.S.C. § 504, Plaintiff is entitled to actual damages and any additional profits attributable to Defendant's infringing acts. Moreover, to the extent that Defendant's infringement of the Enesco Copyrights commenced after the effective date of its

registration, Enesco is entitled to receive statutory damages for willful infringement in an amount up to \$150,000.

62. Pursuant to 17 U.S.C. § 505, Plaintiff is entitled to its full costs of the action. Additionally, to the extent that Defendant's infringement of the Enesco Copyrights commenced after the effective date of its registration, Enesco is entitled to recover its attorneys' fees.

63. Due to Defendant's infringing acts, Plaintiff has suffered significant and irreparable injury for which Plaintiff has no adequate remedy at law.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Enesco, LLC prays for entry of:

1) A **FINAL JUDGMENT** that

- a. Defendant willfully infringed Plaintiff's D241 Patent in violation of 35 U.S.C. § 271; and
- b. Defendant willfully infringed the Enesco Copyrights in violation of 17 U.S.C. § 101, *et seq.*

2) An **ORDER** permanently enjoining Defendant and its officers, directors, agents, servants, employees, affiliates, members, parents, subsidiaries, and all those acting in concert or participation therewith, from manufacturing, designing, exporting, importing, shipping, distributing, promoting, displaying, offering for sale, and selling the Infringing Product;

3) An **ORDER** permanently enjoining Defendant and its officers, directors, agents, servants, employees, affiliates, members, parents, subsidiaries, and all those acting in concert or participation therewith, from infringing the D241 Patent and Enesco Copyrights; and

4) A further **ORDER**

- (a) requiring Defendant to account for all gains, profits, and advantages

- derived and accrued as a result of its infringement of the D241 Patent;
- (b) assessing to Plaintiff an award of its actual damages, trebled, as well as all profits Defendant has derived from infringing the D241 Patent pursuant to 35 U.S.C. 284;
  - (c) awarding to Plaintiff its actual damages, as well as all profits Defendant has derived from infringing the Enesco Copyrights, or, in the alternative, statutory damages in an amount up to \$150,000 pursuant to 17 U.S.C. § 504,
  - (d) awarding to Plaintiff its attorneys' fees, expenses, and costs incurred in connection with this action as provided by 35 U.S.C. § 285;
  - (e) awarding to Plaintiff its costs and attorneys' fees pursuant to 17 U.S.C. § 505;
  - (f) awarding to Plaintiff pre- and post-judgment interest and costs of this action against Defendant; and
  - (g) assessing such additional relief as the Court may deem just and proper.

Dated: January 11, 2018

GOTTLIEB, RACKMAN & REISMAN, P.C.

By:

  
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*Attorneys for Plaintiff Enesco, LLC.*

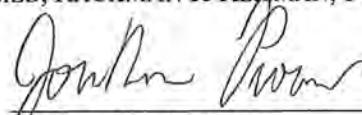
**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Enesco demands a trial by jury on all facts so triable.

Dated: January 11, 2018

GOTTLIEB, RACKMAN & REISMAN, P.C.

By:



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*Attorneys for Plaintiff Enesco, LLC*

## EXHIBIT 1



US00D658241S

(12) **United States Design Patent**  
**Ahrendsen**

(10) **Patent No.:** **US D658,241 S**

(45) **Date of Patent:** **\*\* Apr. 24, 2012**

(54) **TOY WITH MULTIPLE POSITIONS**

(75) Inventor: **Brooke Ahrendsen**, Montclair, NJ (US)

(73) Assignee: **Enesco LLC**, Itasca, IL (US)

(\*\*) Term: **14 Years**

(21) Appl. No.: **29/385,300**

(22) Filed: **Feb. 11, 2011**

(51) **LOC (9) Cl.** ..... **21-01**

(52) **U.S. Cl.** ..... **D21/658; D21/605**

(58) **Field of Classification Search** ..... D21/576,  
D21/585, 587-588, 590, 595, 604-605, 658;  
446/71-73, 97-98, 269, 368-369  
See application file for complete search history.

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

D171,611	S	*	3/1954	Moyer	.....	D21/577
D373,158	S	*	8/1996	Dixon	.....	D21/605
D415,540	S	*	10/1999	Sant	.....	D21/605
D478,363	S	*	8/2003	Steele-Kurtin et al.	.....	D21/604
D534,224	S	*	12/2006	Sutton	.....	D21/604
D560,731	S	*	1/2008	Magener	.....	D21/605

\* cited by examiner

*Primary Examiner* — Sandra Morris

(74) *Attorney, Agent, or Firm* — Gottlieb, Rackman & Reisman, P.C.

(57) **CLAIM**

The ornamental design for a toy with multiple positions, as shown and described.

**DESCRIPTION**

FIG. 1 is a front elevational view of the toy with multiple positions and with a blanket in its initial lower position, showing my new design;

FIG. 2 is a top plan view thereof;

FIG. 3 is a right side elevational view thereof, the left side elevational view being a mirror image;

FIG. 4 is a rear elevational view thereof;

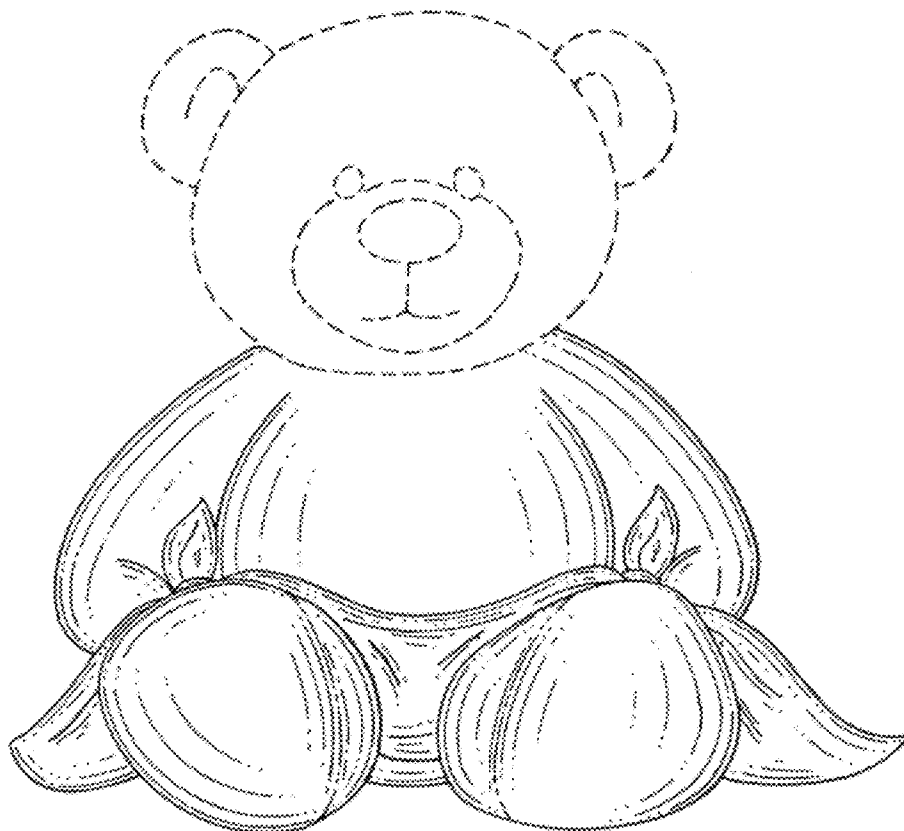
FIG. 5 is a bottom plan view thereof;

FIG. 6 is a front elevational view of the toy with a blanket raised to its intermediate position; and,

FIG. 7 is a front elevational view of the toy with a blanket raised to its upper position.

The broken lines in FIGS. 1-7 showing a head of the bear is for illustrative purpose only and form no part of the claimed design.

**1 Claim, 5 Drawing Sheets**

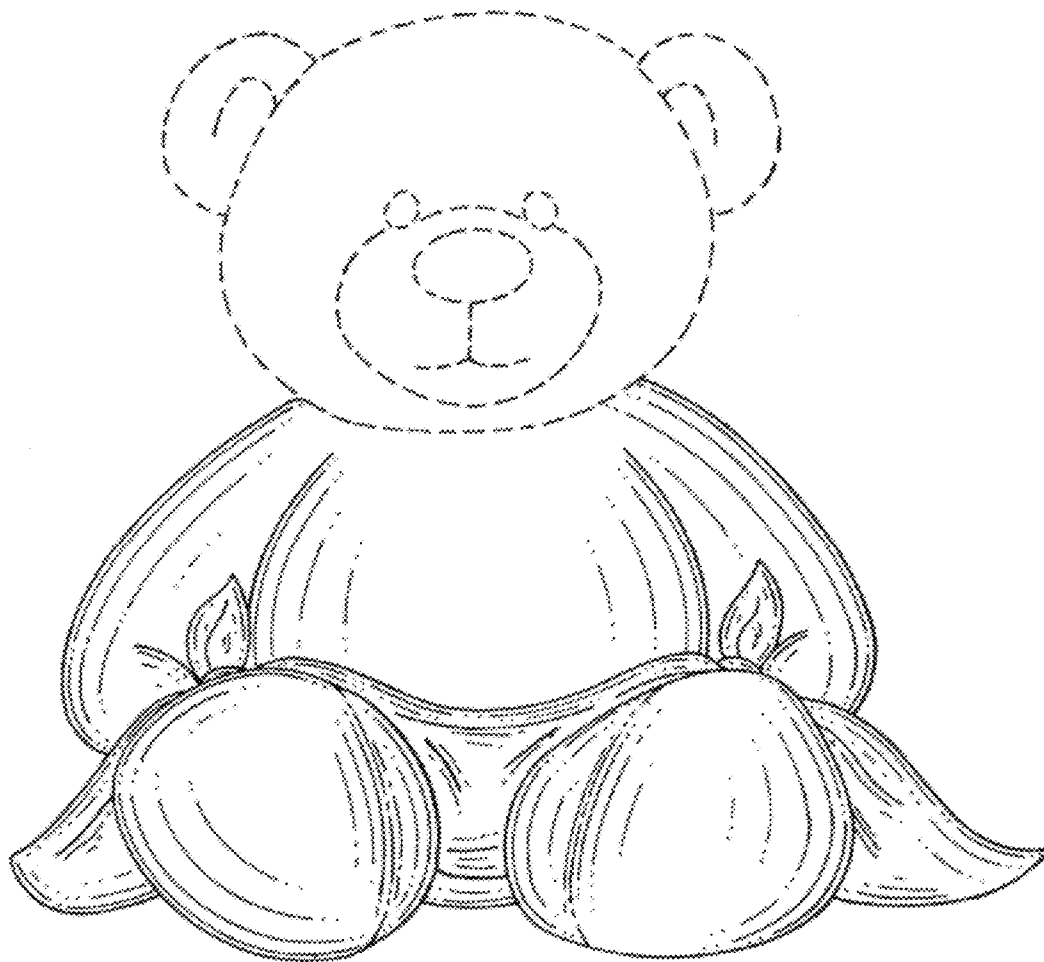


**U.S. Patent**

Apr. 24, 2012

Sheet 1 of 5

**US D658,241 S**



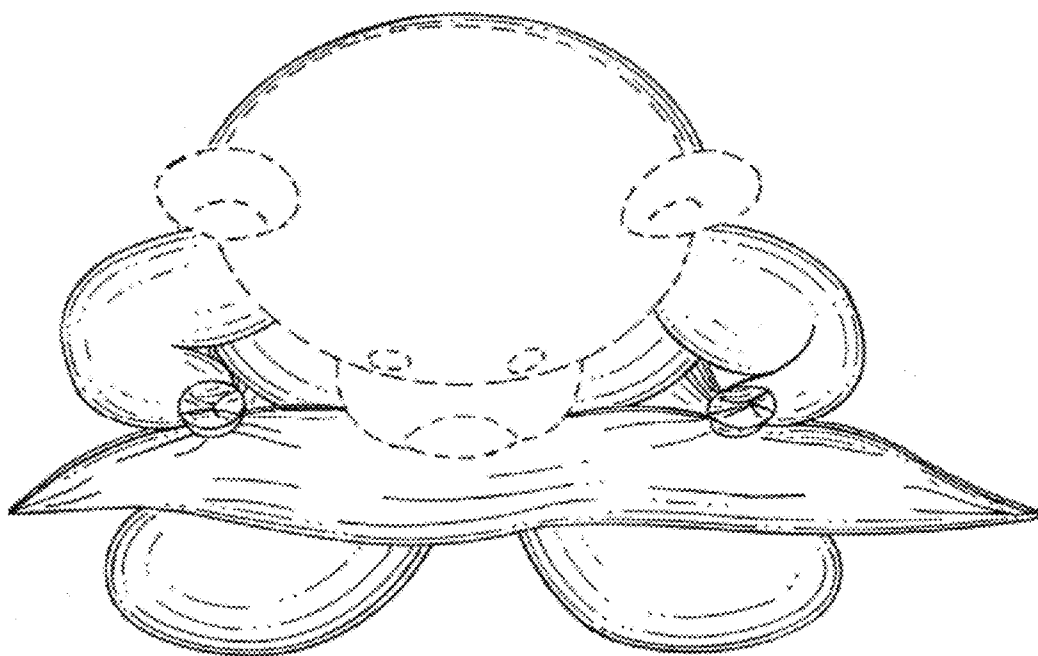
*FIG. 1*

**U.S. Patent**

**Apr. 24, 2012**

**Sheet 2 of 5**

**US D658,241 S**



**FIG. 2**



U.S. Patent

Apr. 24, 2012

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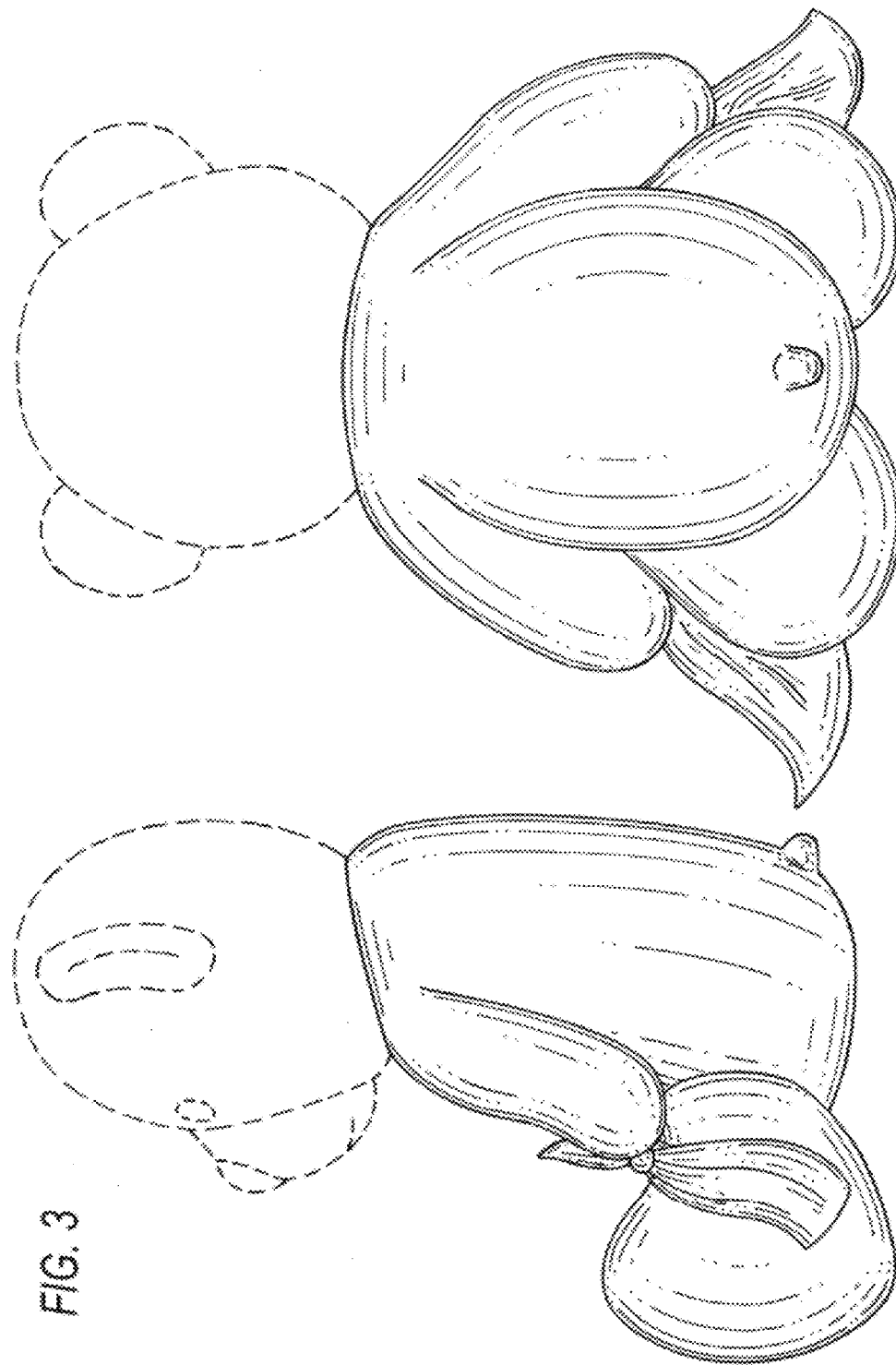


FIG. 3

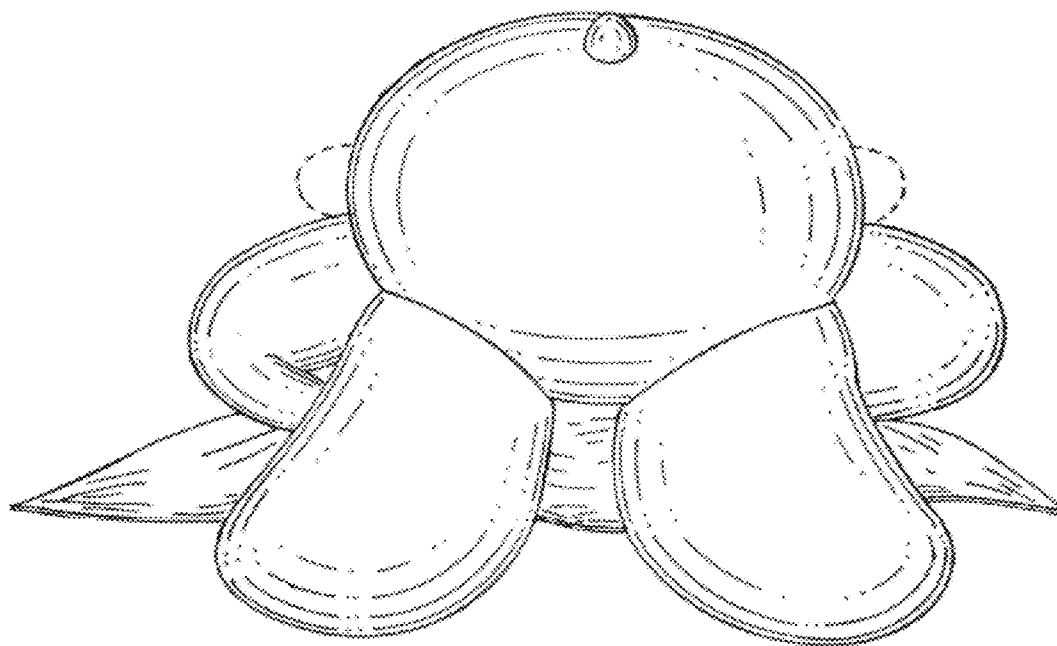
FIG. 4

**U.S. Patent**

**Apr. 24, 2012**

**Sheet 4 of 5**

**US D658,241 S**



**FIG. 5**

U.S. Patent

Apr. 24, 2012

Sheet 5 of 5

US D658,241 S

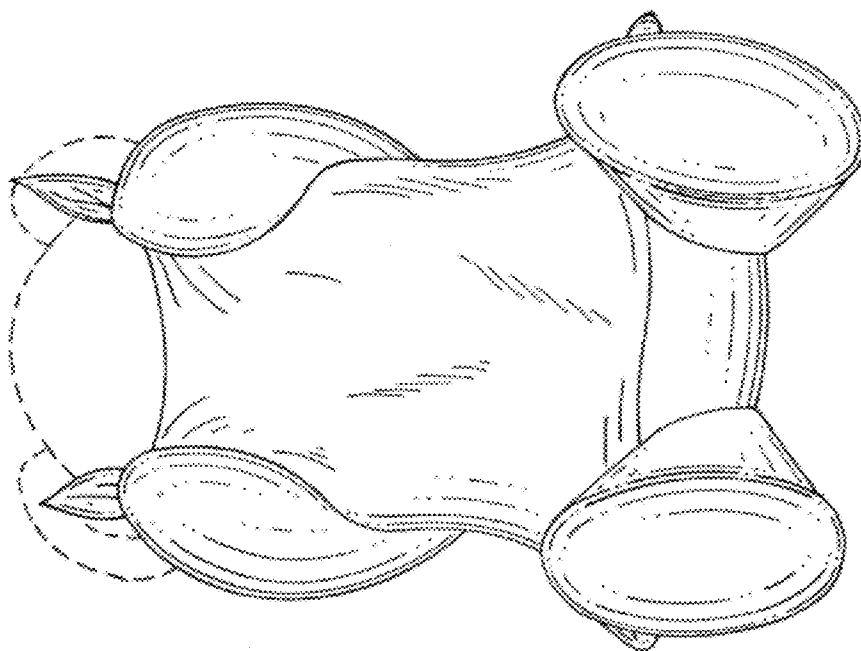


FIG. 7

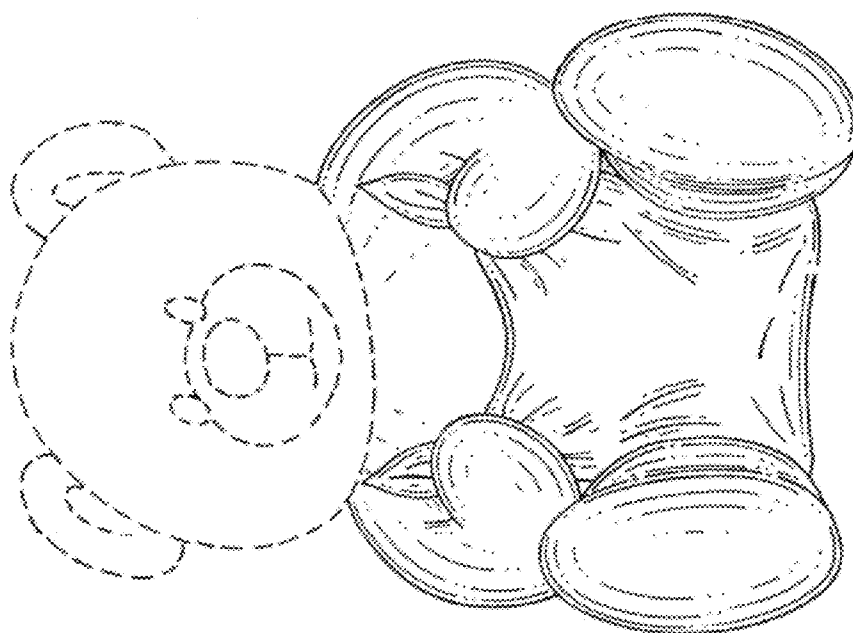


FIG. 6

## EXHIBIT 2

**SEVENTH AVENUE®**  
Always Fun • Always Unique • Always Worth Your Search



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Home Page • Kids' • Toys • Games & Electronics • Peek-A-Boo Bear



### Peek-A-Boo Bear

Currently not available.

★★★★★ Read Review (9) | Write a review

Let our talking, moving Peek-a-boo Bear delight the little peek-a-boo fan in your life! Adorable all by himself, this talking teddy uses his soft blanket to play peek-a-boo (and says "peek-a-boo" with great comedic timing)! Uses 3 AA batteries (not included). On/off button. Plush and plastic. 10" h. Ages 3 to 5.

Sign in to your Address Book

**SAFETY WARNING:**  
CHOKING HAZARD  
Small parts.  
Not for children under 3 yrs.

Customer Reviews Shipping Restrictions

Sort By: Most Recent

### Peek-A-Boo Bear

5 Star 7  
4 Star 0  
3 Star 0  
2 Star 0  
1 Star 2

★★★★★  
4.1 out of 5 stars  
Write a review

★★★★★

#### Super

Date: December 29, 2015  
Reviewer: Anonymous,  
Tallassee, AL

My 18 month old granddaughter was in love at first sight. It's her first stop in the morning and last stop at night.

Was this review helpful?   0 of 0 people found this review helpful

★★★★★

#### Cute and Cuddly!

Date: December 29, 2015  
Reviewer: Elle,  
Orlando, Florida

This peekaboo bear was adorable and the Baby loves it!

Was this review helpful?   0 of 0 people found this review helpful

★★★★★

#### Perfect gift

Date: December 26, 2015  
Reviewer: GG,  
Winston Salem

My grand baby loved it!

Was this review helpful?   0 of 0 people found this review helpful

★★★★★

#### Cute item

Date: December 15, 2015  
Reviewer: Donna parson,  
Antioch, IL 60002

Very cute item but the voice in the bear is not very clear. A young child would not understand the phrases.

Was this review helpful?   0 of 0 people found this review helpful

★★★★★

#### A great find

Date: December 08, 2015  
Reviewer: Anonymous,  
Westland, MI

This is precious, sound could be a little louder though.

Was this review helpful?   0 of 0 people found this review helpful

### You May Also Like



#### Personalized Purse Dogs

\$19.99  
More Styles Available



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On orders by December 20th  
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Our Affiliated Sites: The Swiss Colony | Midnight Velvet | Ginny's | Country Door | Monroe and Main | The Tender Flirt

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TMC001534



## New Peek-A-Boo Bear \$19.95

Let our talking, moving Peek-a-boo Bear delight the little peek-a-boo fan in your life! Adorable all by himself, this talking teddy uses his soft blanket to play peek-a-boo (and says "peek-a-boo" with great comedic timing)! Uses 3 AA batteries (not included). On/off button. Plush and plastic. 10" h. Ages 3 to 5.

Peek-A-Boo Bear #DW714578 \$19.95

Quantity:  Ship to:

[Sign in to your Address Book.](#)



[Add to Wish List](#) [Email to a Friend](#)



**! SAFETY WARNING:**  
CHOKING HAZARD  
Small parts.  
Not for children under 3 yrs.

© 2015 Seventh Avenue

TMC001534

## EXHIBIT 3

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December 1, 2017

**Via Federal Express and Email to [engling@sccompanies.com](mailto:engling@sccompanies.com)**

Mr. Timothy Engling  
Associate General Counsel  
Colony Brands, Inc.  
1112 7<sup>th</sup> Avenue  
Monroe, WI 53566-1364

**Re: Seventh Avenue Copyright and Design Patent Infringement – Enesco, LLC**

Dear Mr. Engling:

Our firm is intellectual property counsel to Enesco, LLC of Itasca, Illinois (“Enesco”). Gund, a division of Enesco, is a famed designer and distributor of stuffed plush toys, selling its products across the United States and throughout the world.

Among our client’s most popular toys is its “Peek-A-Boo Bear,” a seated plush teddy bear holding a square baby blanket (“Peek-A-Boo Bear”):



Available online and in stores, offered by Enesco directly and by leading retailers, the Peek-A-Boo Bear has earned significant sales success and garnered critical acclaim; by way of example, the Peek-A-Boo Bear was named one of the 100 Best Children’s Products of 2011 by Dr. Toy.

The Peek-A-Boo Bear incorporates a mechanism that, when activated by pressing a button on the toy’s left foot, articulates the arms up and down so that the blanket alternately hides and reveals its face.



Mr. Timothy Engling  
Colony Brands, Inc.  
December 1, 2017  
Page 2

In recognition of its rights in the Peek-A-Boo Bear's design, our client is the exclusive owner of United States Patent No. D658,241, granted on April 24, 2012, and entitled "Toy With Multiple Positions" ("D241 Patent"). A copy of Enesco's D241 Patent is attached as Exhibit A. The design disclosed in the D241 Patent is embodied in the Peek-A-Boo Bear.

In addition, our client is the owner of United States Copyright Reg. No. VA 2-024-940 entitled "320193 Animated Peek-A-Boo Bear," covering the design and voice track of the Peek-A-Boo Bear ("Enesco Copyright"). A true and correct copy of the Enesco copyright registration is attached as Exhibit B.

It has recently come to our client's attention that Seventh Avenue, a subsidiary of Colony Brands, Inc. ("Seventh Avenue") has sold and distributed a "Peek-A-Boo Bear" plush toy teddy bear (the "Seventh Avenue Bear") on its website that is extremely similar to Enesco's product. Copies of screenshots from the website [seventhavenue.com](http://seventhavenue.com) offering the Peek-A-Boo Bear for sale are attached as Exhibit C.

As with Enesco's Peek-A-Boo Bear, the Seventh Avenue Bear is in a seated position and holds a square baby blanket. The fringe of both toys' blankets is finished in a rougher material with a sheen that contrasts with a velour blanket, and both blankets feature a design in the bottom right hand corner. Both toys have brown tufted fur, brown noses, and, lighter colored faces.

Seventh Avenue Bear



Peek-A-Boo Bear



In sum, the Seventh Avenue Bear embodies the design disclosed in the D241 Patent and reproduces the design of the Peek-A-Boo Bear, as protected by the Enesco Copyright. Accordingly, the distribution, marketing, and sale of the Seventh Avenue Bear constitutes patent infringement in violation of the Patent Act, 35 U.S.C. §271 et seq., and

Mr. Timothy Engling  
Colony Brands, Inc.  
December 1, 2017  
Page 3

copyright infringement in violation of the Copyright Act, 17 U.S.C. § 101 et seq.

We therefore request that Seventh Avenue immediately:

1. provide Enesco with the name and address of the supplier and/or vendor(s) of the Seventh Avenue Bear, as well as documentation reflecting the manufacture, importation, and sales to date of the Seventh Avenue Bear;
2. disclose any remaining quantity of the Seventh Avenue Bear in inventory under your company's control; and
3. provide an accounting of all sales of the Seventh Avenue Bear to date, and agree to compensate our client accordingly.

Seventh Avenue's activities have caused injury to our client. We therefore request that you or your attorney inform us by not later than **December 12, 2017**, that your company will comply with the above demands.

This letter constitutes notice of Enesco's intellectual property, and is not intended as a complete statement of any claims, causes of action, defenses, rights, and/or remedies that Enesco may assert or to which it may be entitled, all of which are expressly reserved.

Very truly yours,  
GOTTLIEB, RACKMAN & REISMAN, P.C.



Marc P. Misthal

MPM/jmp  
Encl.

cc: Enesco, LLC (w/encls.)  
Jonathan M. Purow, Esq.

EXHIBIT A

US00D658241S

(12) **United States Design Patent**  
**Ahrendsen**

(10) **Patent No.:** **US D658,241 S**  
(45) **Date of Patent:** **\*\* Apr. 24, 2012**

(54) **TOY WITH MULTIPLE POSITIONS**

(75) Inventor: **Brooke Ahrendsen**, Montclair, NJ (US)

(73) Assignee: **Enesco LLC**, Itasca, IL (US)

(\*\*) Term: **14 Years**

(21) Appl. No.: **29/385,300**

(22) Filed: **Feb. 11, 2011**

(51) **LOC (9) Cl.** ..... **21-01**

(52) **U.S. Cl.** ..... **D21/658; D21/605**

(58) **Field of Classification Search** ..... D21/576,  
D21/585, 587-588, 590, 595, 604-605, 658;  
446/71-73, 97-98, 269, 368-369

See application file for complete search history.

(56) **References Cited**

**U.S. PATENT DOCUMENTS**

D171,611	S	*	3/1954	Moyer	.....	D21/577
D373,158	S	*	8/1996	Dixon	.....	D21/605
D415,540	S	*	10/1999	Sant	.....	D21/605
D478,363	S	*	8/2003	Steele-Kurtin et al.	.....	D21/604
D534,224	S	*	12/2006	Sutton	.....	D21/604
D560,731	S	*	1/2008	Magener	.....	D21/605

\* cited by examiner

*Primary Examiner* — Sandra Morris

(74) *Attorney, Agent, or Firm* — Gottlieb, Rackman & Reisman, P.C.

(57) **CLAIM**

The ornamental design for a toy with multiple positions, as shown and described.

**DESCRIPTION**

FIG. 1 is a front elevational view of the toy with multiple positions and with a blanket in its initial lower position, showing my new design;

FIG. 2 is a top plan view thereof;

FIG. 3 is a right side elevational view thereof, the left side elevational view being a mirror image;

FIG. 4 is a rear elevational view thereof;

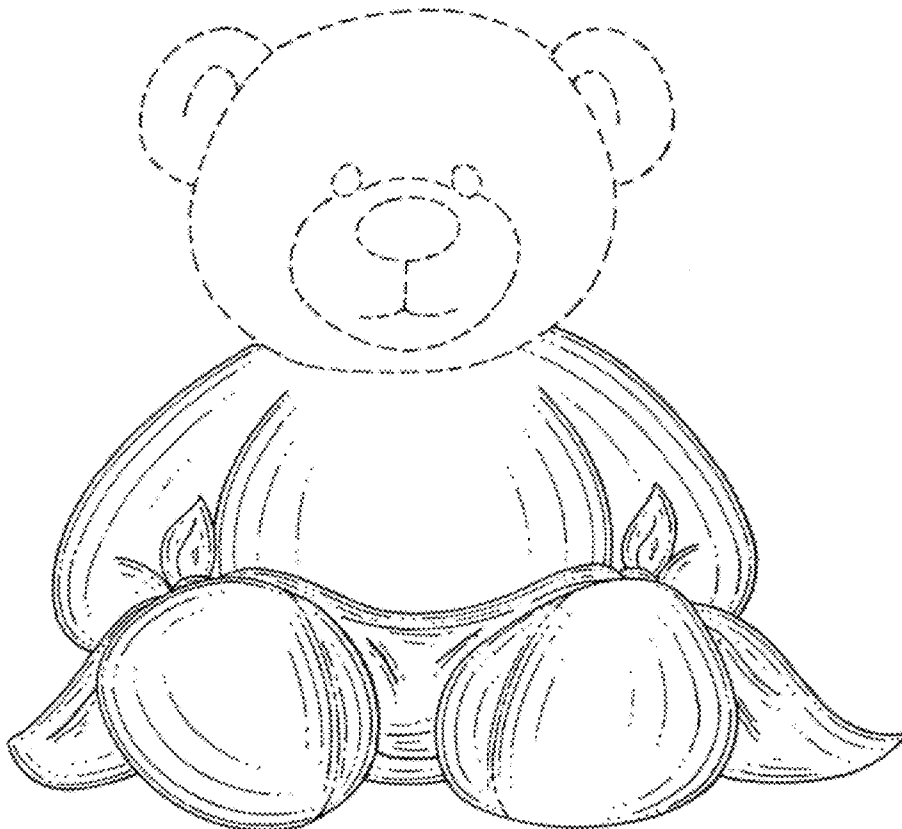
FIG. 5 is a bottom plan view thereof;

FIG. 6 is a front elevational view of the toy with a blanket raised to its intermediate position; and,

FIG. 7 is a front elevational view of the toy with a blanket raised to its upper position.

The broken lines in FIGS. 1-7 showing a head of the bear is for illustrative purpose only and form no part of the claimed design.

**1 Claim, 5 Drawing Sheets**

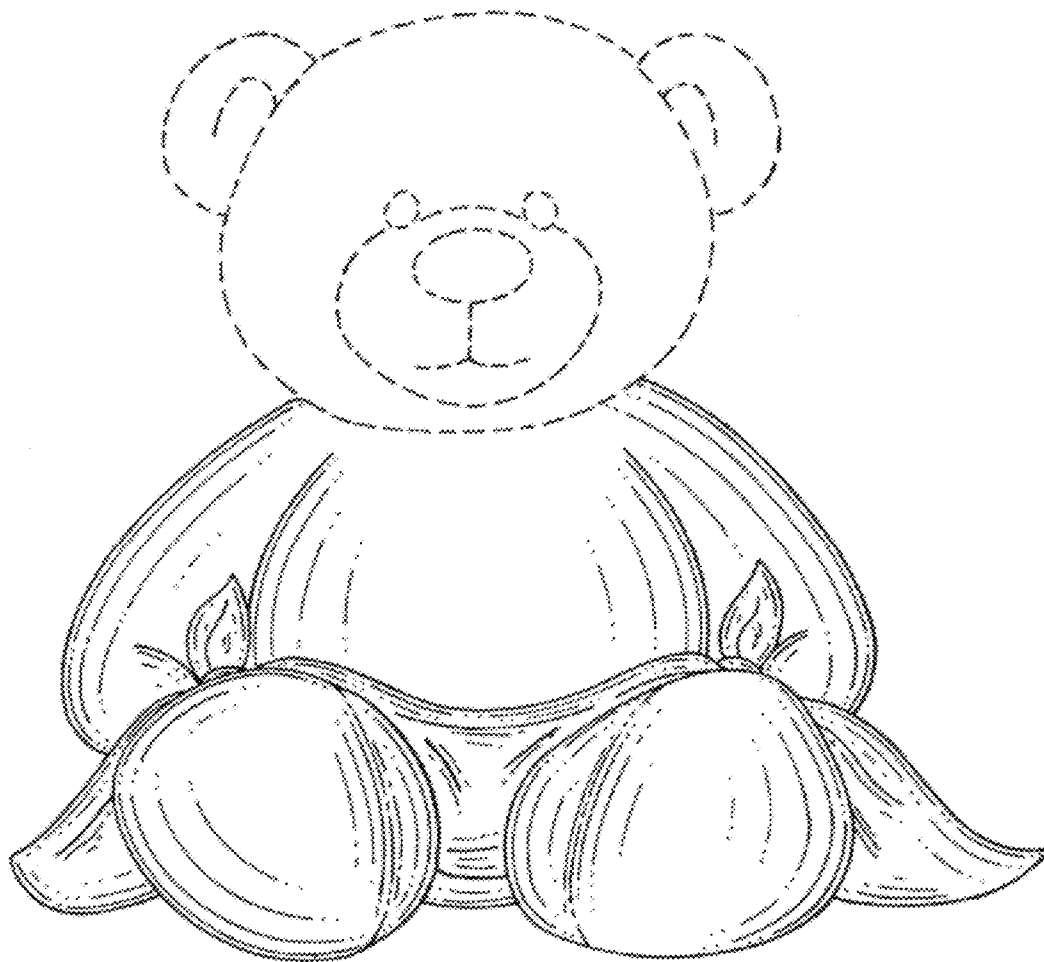


**U.S. Patent**

**Apr. 24, 2012**

**Sheet 1 of 5**

**US D658,241 S**



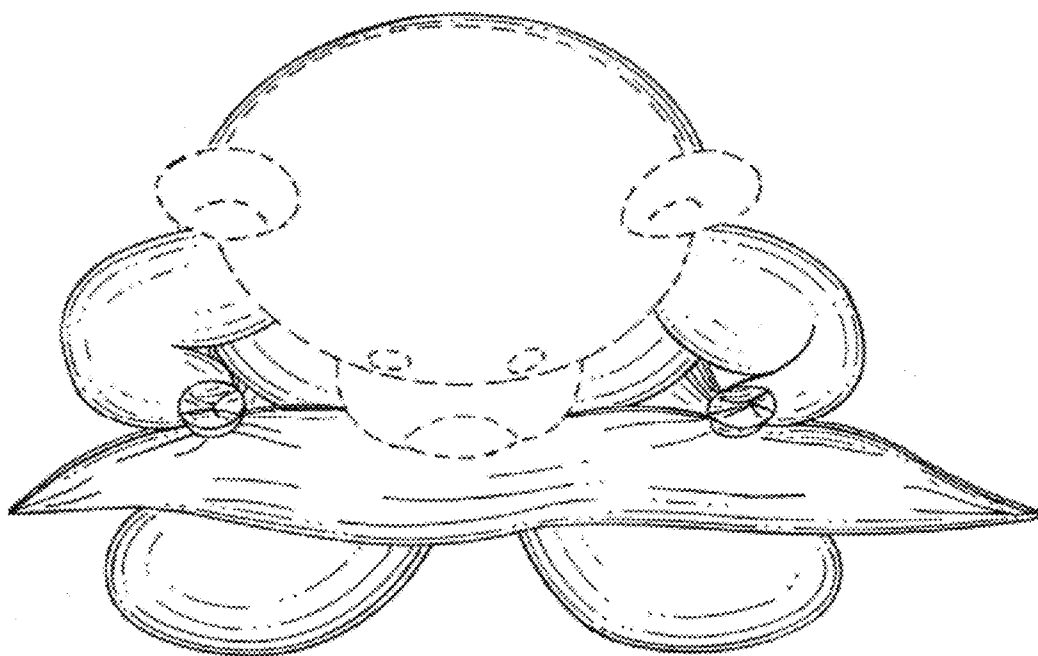
*FIG. 1*

**U.S. Patent**

**Apr. 24, 2012**

**Sheet 2 of 5**

**US D658,241 S**



**FIG. 2**

U.S. Patent

Apr. 24, 2012

Sheet 3 of 5

US D658,241 S

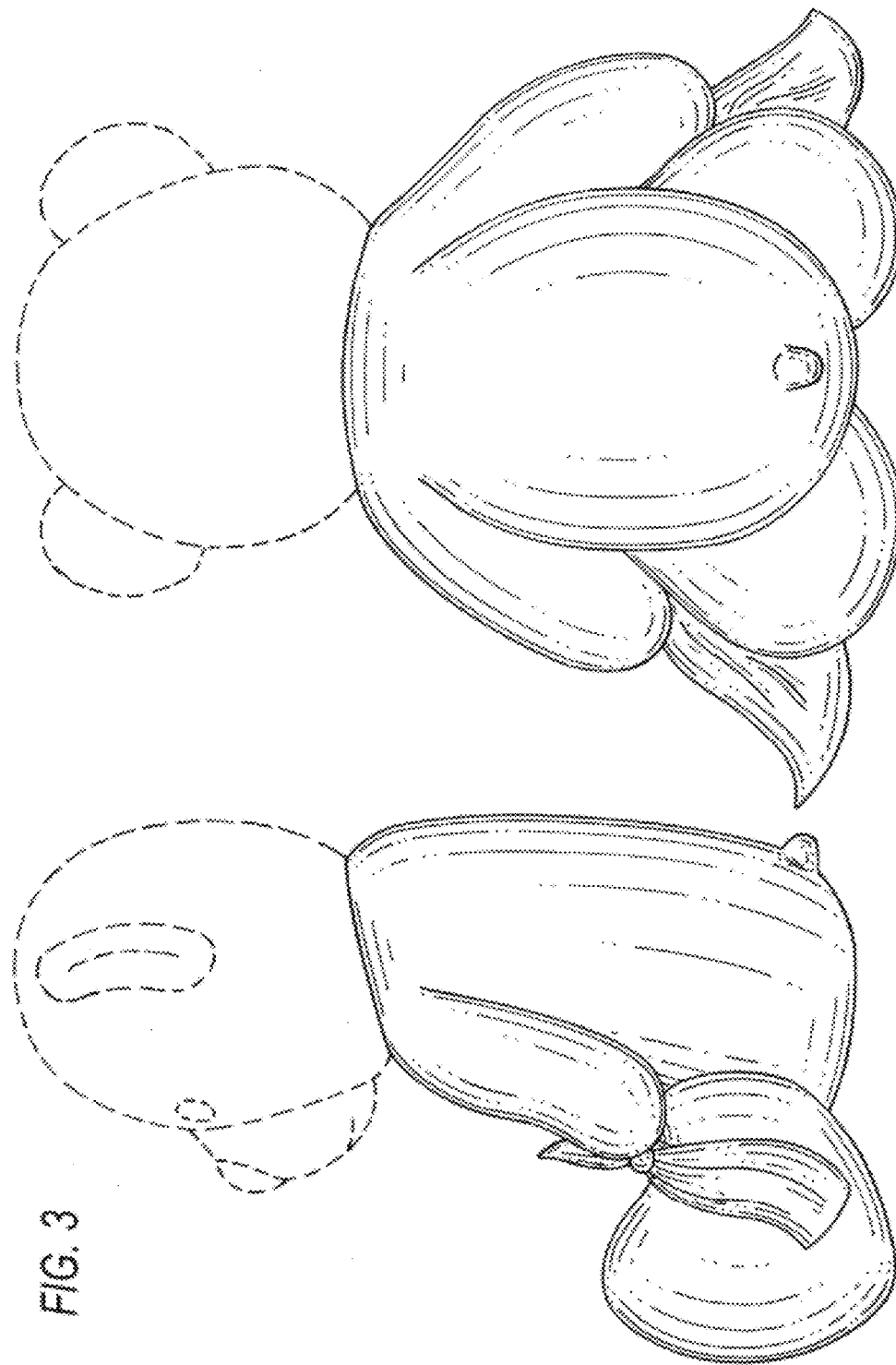


FIG. 3

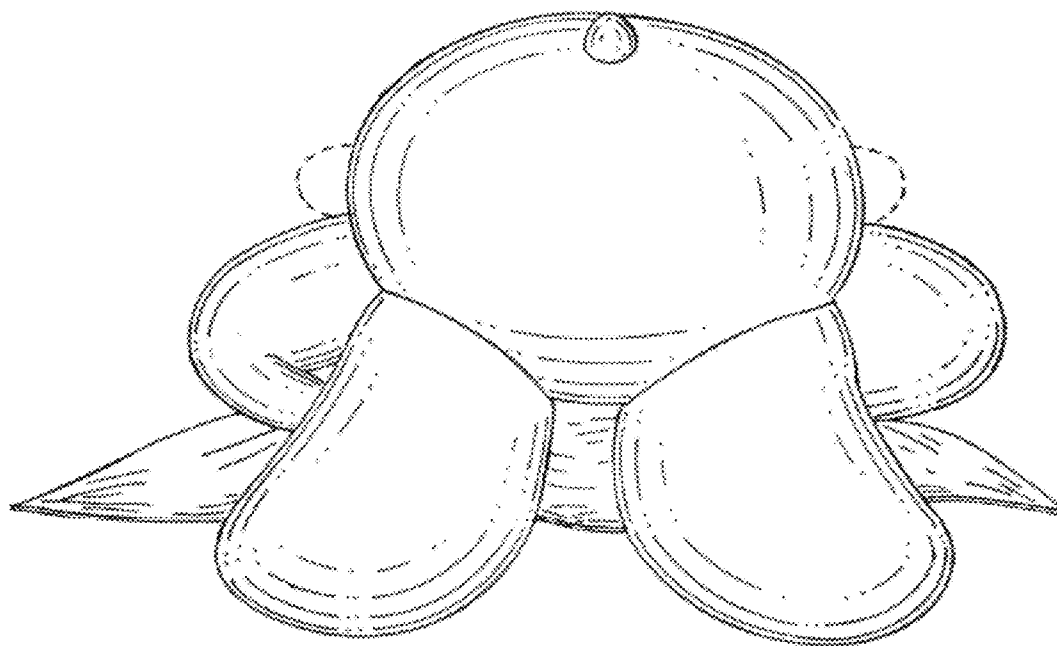
FIG. 4

**U.S. Patent**

**Apr. 24, 2012**

**Sheet 4 of 5**

**US D658,241 S**



**FIG. 5**



U.S. Patent

Apr. 24, 2012

Sheet 5 of 5

US D658,241 S

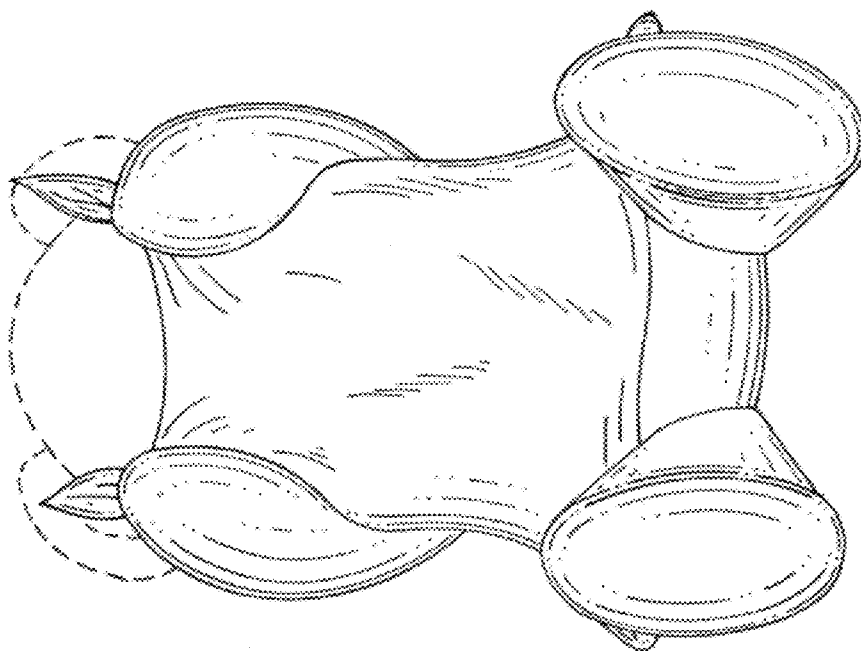


FIG. 7

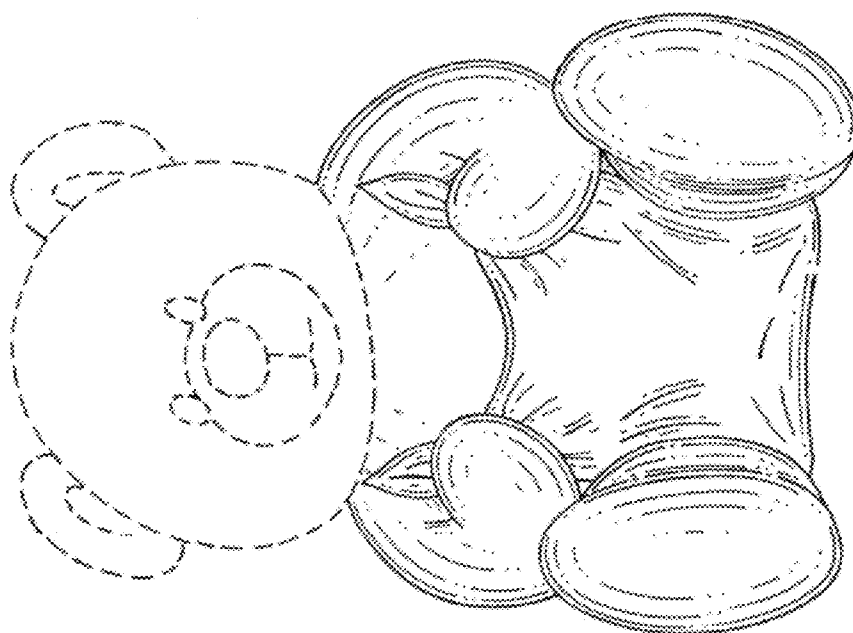


FIG. 6

EXHIBIT B



## Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Karen Leigh Clayett*

Acting United States Register of Copyrights and Director

Registration Number

**VA 2-024-940**

Effective Date of Registration:

December 20, 2016

## Title

---

**Title of Work:** #320193 Animated Peek-A-Boo Bear

## Completion/Publication

---

**Year of Completion:** 2011

**Date of 1st Publication:** January 03, 2011

**Nation of 1st Publication:** United States

## Author

---

- **Author:** Enesco, LLC
- Author Created:** sculpture, 3D plush animal
- Work made for hire:** Yes
- Citizen of:** United States

## Copyright Claimant

---

**Copyright Claimant:** Enesco, LLC  
225 Windsor Drive, Itasca, IL, 60143, United States

## Certification

---

**Name:** Matthew T. Myren

**Date:** December 20, 2016

**Applicant's Tracking Number:** 320193

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## EXHIBIT C

**SEVENTH AVENUE®**  
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Search Keyword or Item #



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### Peek-A-Boo Bear

Currently not available.

★★★★★ Read Review (9) | Write a review

Let our talking, moving Peek-a-boo Bear delight the little peek-a-boo fan in your life! Adorable all by himself, this talking teddy uses his soft blanket to play peek-a-boo (and says "peek-a-boo" with great comedic timing)! Uses 3 AA batteries (not included). On/off button. Plush and plastic. 10" h. Ages 3 to 5.

Sign in to your Address Book

**SAFETY WARNING:**  
CHOKING HAZARD  
Small parts.  
Not for children under 3 yrs.

Customer Reviews Shipping Restrictions

Sort By: Most Recent

### Peek-A-Boo Bear

5 Star 7  
4 Star 0  
3 Star 0  
2 Star 0  
1 Star 2

★★★★★  
4.1 out of 5 stars  
Write a review

★★★★★

Date: December 29, 2015  
Reviewer: Anonymous,  
Tallassee, AL

#### Super

My 18 month old granddaughter was in love at first sight. It's her first step in the morning and last stop at night.

Was this review helpful?   0 of 0 people found this review helpful

★★★★★

Date: December 29, 2015  
Reviewer: Elle,  
Orlando, Florida

#### Cute and Cuddly!

This peekaboo bear was adorable and the Baby loves it!

Was this review helpful?   0 of 0 people found this review helpful

★★★★★

Date: December 26, 2015  
Reviewer: GG,  
Winston Salem

#### Perfect gift

My grand baby loved it!

Was this review helpful?   0 of 0 people found this review helpful

★★★★★

Date: December 15, 2015  
Reviewer: Donna parson,  
Antioch, IL 60002

#### Cute item

Very cute item but the voice in the bear is not very clear. A young child would not understand the phrases.

Was this review helpful?   0 of 0 people found this review helpful

★★★★★

Date: December 08, 2015  
Reviewer: Anonymous,  
Westland, MI

#### A great find

This is precious, sound could be a little louder though.

Was this review helpful?   0 of 0 people found this review helpful

### You May Also Like



#### Personalized Purse Dogs

\$19.99  
More Styles Available



#### Spiderman Power Bop by Marvel

\$19.99



#### Kids' Tablet and Phone Set

On orders by December 20th  
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Use Tax Notice

Our Affiliated Sites: The Swiss Colony | Midnight Velvet | Ginny's | Country Door | Monroe and Main | The Tender Flirt

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TMC001534



### New Peek-A-Boo Bear

**\$19.95**

Let our talking, moving Peek-a-boo Bear delight the little peek-a-boo fan in your life! Adorable all by himself, this talking teddy uses his soft blanket to play peek-a-boo (and says "peek-a-boo" with great comedic timing)! Uses 3 AA batteries (not included). On/off button. Plush and plastic. 10" h. Ages 3 to 5.

Peek-A-Boo Bear #DW714578 \$19.95

Quantity:  Ship to:

[Sign in to your Address Book.](#)



[Add to Wish List](#) [Email to a Friend](#)



**! SAFETY WARNING:**  
**CHOKING HAZARD**  
Small parts.  
Not for children under 3 yrs.

© 2015 Seventh Avenue

TMC001534

## EXHIBIT 4

# Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

*Maria A. Pallante*

Register of Copyrights, United States of America

**Registration Number**

**TX 8-028-904**

**Effective Date of Registration:**

April 03, 2015

## Title

**Title of Work:** GUND August 2011 Catalog

## Completion/Publication

**Year of Completion:** 2011  
**Date of 1st Publication:** August 08, 2011  
**Nation of 1<sup>st</sup> Publication:** United States

## Author

• **Author:** Enesco, LLC through its GUND division  
**Author Created:** contribution(s) to a collective work  
**Work made for hire:** Yes  
**Domiciled in:** United States  
**Anonymous:** Yes

## Copyright Claimant

**Copyright Claimant:** Enesco, LLC through its GUND division  
One Runyons Lane, Edison, NJ, 08817, United States

## Rights and Permissions

**Organization Name:** Enesco, LLC through its GUND division  
**Name:** Stacey Coleman  
**Email:** scoleman@gund.com  
**Telephone:** (732)248-2572  
**Address:** One Runyons Lane  
Edison, NJ 08817 United States

## Certification

**Name:** Stacey Coleman  
**Date:** March 31, 2015



# GUND®

AUGUST 2011







Hello Baby,  
Peek a Boo  
is the most fun  
with you!

Hi Cutie Pie!

Peek a Boo,  
I found you...



Where did  
you go?



### 320193 | Peek A Boo Bear

Features: Recites random phrases as arms and blanket move up and down. Includes 3 replaceable AA batteries. On / Off switch on foot.

Phrases are:

- Hello baby, Peek a Boo is the most fun with you.
- Where did you go? Peek a Boo, I found you.
- Hi Cutie Pie
- Where Are You? Peek a Boo, I see you.
- Where am I? Here I am.
- Again, again, let's keep playing

11.5" / 29cm

### 089064 | Nighty Night Bear with Light and Sound

Features: Plays "Twinkle, Twinkle Little Star," while head moves and feet light up. Includes 3 replaceable AA batteries. On / Off switch on bear's paw.

13.5" / 34cm





# Certificate of Registration



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*Karen Leigh Clayett*

Acting United States Register of Copyrights and Director

Registration Number

**VA 2-024-940**

Effective Date of Registration:

December 20, 2016

## Title

Title of Work: #320193 Animated Peek-A-Boo Bear

## Completion/Publication

Year of Completion: 2011

Date of 1st Publication: January 03, 2011

Nation of 1<sup>st</sup> Publication: United States

## Author

- Author: Enesco, LLC  
Author Created: sculpture, 3D plush animal  
Work made for hire: Yes  
Citizen of: United States

## Copyright Claimant

Copyright Claimant: Enesco, LLC  
225 Windsor Drive, Itasca, IL, 60143, United States

## Certification

Name: Matthew T. Myren

Date: December 20, 2016

Applicant's Tracking Number: 320193











